

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM SCALES,

Plaintiff,

-against-

ATU LOCAL 1181,

Defendant.

23-CV-9009 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed this action *pro se*. By order and judgment dated March 15, 2024, and entered on the court's docket on March 19, 2024, the Court dismissed the complaint for failure to state a claim on which relief may be granted. (ECF 6.) Plaintiff filed a notice of appeal to the United States Court of Appeals for the Second Circuit (ECF 8), and by mandate dated November 1, 2024, the Court of Appeals dismissed the appeal because it “lack[ed] an arguable basis either in law or in fact.” (ECF 9 (internal quotation marks and citation omitted).) On November 11, 2024, Plaintiff filed a letter in which he requests that the Court “reinstate” his case. (ECF 10.)

The Court liberally construes this submission as a motion for relief from a judgment or order under Rule 60(b) of the Federal Rules of Civil Procedure.¹ See *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); see also *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (the solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, “relaxation of the limitations on the amendment of pleadings,” leniency in the enforcement of other procedural rules, and “deliberate, continuing efforts to ensure that a

¹ The Court declines to construe the submission as a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure because such a motion “must be filed no later than 28 days after the entry of judgment,” Fed. R. Civ. P. 59(e), and Plaintiff did not file his submission until almost eight months after the court entered judgment.

pro se litigant understands what is required of him” (citations omitted)). After reviewing the arguments in Plaintiff’s submission, the Court denies the motion.

DISCUSSION

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court’s order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b). A motion based on reasons (1), (2), or (3) must be filed “no more than one year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

The Court has considered Plaintiff’s arguments, and even under a liberal interpretation of his motion, Plaintiff has failed to demonstrate that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. “[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5).” *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith v. Sec’y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A Rule 60(b)(6) motion must show both that the motion was filed within a “reasonable time” and that “‘extraordinary circumstances’ [exist] to warrant relief.” *Old Republic Ins. Co. v. Pac. Fin. Servs. of Am., Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted).

Plaintiff has failed to demonstrate that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950).

CONCLUSION

Plaintiff's motion for reconsideration (ECF 10) is denied.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: November 14, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge